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No. 95-523

Supreme Court, U.S.
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In The
Supreme Court Of The United States
October Term, 1995

LAKE SPEARS,
Petitioner

v.

STATE OF CONNECTICUT,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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QUESTION PRESENTED FOR REVIEW

Whether the Supreme Court of the State of Connecticut correctly decided that the Mashantucket Pequot Indian Land Claims Settlement Act of 1983 was a grant by Congress of the continuation of criminal jurisdiction over Indians on the Reservation that the State had prior to the enactment of that Act, which Act also granted federal status to this state recognized Tribe?

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PARTIES TO PROCEEDINGS BELOW

Respondent agrees with Petitioner's list. Pet. p. 1

OPINION BELOW

Respondent agrees with Petitioner's statement.

JURISDICTION

Respondent agrees with Petitioner's statement.

STATUTORY PROVISIONS INVOLVED

Respondent agrees with Petitioner's statement except that the official title of 25 U.S.C. §1755 is "State jurisdiction over reservation" (Emphasis applied)

STATEMENT OF THE CASE

The Respondent agrees with the Petitioner's STATEMENT OF THE CASE (Pet. pp. 3-6) except that both the Office of the Attorney General of the State of Connecticut and the United States Attorney for the District of Connecticut were granted amicus status and each did, in fact, file a brief supporting the claim of the State's Attorney that the State had criminal jurisdiction. The Tribe was granted amicus status and filed a brief supporting the claim of Petitioner.

REASONS FOR DENIAL OF THE WRIT

This case does not have significance beyond the private interest of the parties. It sets no precedent, and the issue is unlikely to recur. There is no important issue of federal law. Finally, the ruling of the Connecticut Supreme Court was based on, and not in conflict with, decided case law, was accurate and correct, and the right result was reached.

I

THE LAND CLAIMS SETTLEMENT ACT CONFERRED CRIMINAL JURISDICTION IN THE STATE

Prior to 1983, the Mashantucket Pequot Indian Tribe (hereafter "Tribe") was not federally recognized. In 1976 the Tribe brought a civil action claiming title to certain public and private lands in Ledyard, Connecticut adjacent to its state reservation. Only a few tribal members lived on the reservation; the Tribe had no law enforcement agency or courts. In 1983 the Mashantucket Indian Land Claims Settlement Act (hereafter Settlement Act) codified at 25 U.S.C. §§1751-1760 was

enacted into law. The Settlement Act reflected an agreement by the parties to the litigation to resolve the Tribe's claims and to eliminate the cloud on titles to the lands. As part of the Act, Congress specifically recognized the Tribal Council, who had represented the Tribe in the civil action and before Congress, as the official tribal representative; and that the Tribe agreed to the terms of the Act. See 25 U.S.C. §1751(d) and (e). State v. Spears, 234 Conn. 78 at 83-84 (1995).

Importantly, the Tribe first became federally recognized as part of and through the Act. At the same time, and as part of the agreement, Congress continued full state jurisdiction over the reservation. Section 6 of the Settlement Act, codified at 25 U.S.C. §1755 is entitled "STATE JURISDICTION OVER RESERVATION." That section provides in pertinent part, "...the

reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in..." (25 U.S.C. §1321). The extent or scope of jurisdiction provisions of §1321 relate to criminal offenses by or against Indians, and "the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the state." The Senate Select Committee's report on September 12, 1983 states, "Section 6 provides that the reservation of the...Tribe <u>is</u> subject to the full extent of State jurisdiction...the Tribe's reservation <u>has</u> this status notwithstanding Section 406 of the Indian Civil Rights Act" (requirement of tribal consent). This language reflects the clear intent of Congress that the full criminal jurisdiction which the state had over the reservation be continued upon the Tribe

first becoming federally recognized and the land becoming "Indian Country".

Contrary to Petitioner's claim (Pet. p. 10), the Connecticut Supreme Court did not find "an ambiguity in the statute". Petitioner gives no citation for this statement, because none exists. In fact, that Court stated that as a threshold matter it would consider whether §1755 is ambiguous. 234 Conn. at 86. The Court found that since §1755 referred to another statute (25 U.S.C. §1321) it must look at that statute to interpret §1755. The Court then carefully examined the legislative history of the Act, applied principles of statutory construction, and in effect determined that only the scope or extent portion of §1321 was incorporated by reference in §1755. It thus correctly concluded that §1755 was not ambiguous. After carefully noting that the history of

the Settlement Act provided that the reservation is subject to the full extent of state jurisdiction, and that it has this status, notwithstanding the "consent" provisions of §1321, the Court concluded that the Settlement Act itself was a grant by Congress of jurisdiction to the state without any further action by the Tribe or State being required. It was self-executing. 234 Conn. at 93. In fact, the reference to §1321 was only to set forth the extent of the jurisdiction granted, not the means of acquiring it. It should also be noted that even if some tribal consent was required, such was given by the Tribe when it entered the agreement leading to the enactment of the Settlement Act.

The decision of the Connecticut Supreme Court relies upon and is consistent with the decisions of this Court. In Negonsott v. Samuels, 113 S.Ct. 1119, 1122 (1993),

the Court said that in determining whether Congress granted criminal jurisdiction over Indians, "Our task is to give effect to the will of Congress...". An enactment should be read so as to give effect "to every clause and word of the statute." Id. Here, if its purpose were not to confer jurisdiction, §1755 would have no meaning, or at least be redundant. While statutes passed for the benefit of Indian Tribes are to be liberally construed in favor of Indians, this means for the benefit of the tribes, not individual Indian defendants. Id. 1123-24. Here, as in Negonsott, at the time of the Settlement Act there were no tribal police or courts, and continuing criminal jurisdiction in the state was clearly a benefit to the Tribe. Other important cases considered were Bryan v. Itasca County, 96 S.Ct. 2102 (1976); Kennerly v. District Court, 91 S.Ct. 480 (1971).

II

THE GENERAL PROVISIONS OF PUBLIC LAW 280 DO NOT APPLY HERE

Although the Connecticut Supreme Court did not directly consider or decide this issue, since the Petitioner relies heavily on the consent provisions, 25 U.S.C. §1321 (Public Law 280), it must be pointed out that that law has no application to this case, i.e., to the Mashantucket Reservation.

What is now the provision for the *acquisition* of state jurisdiction over federally recognized tribes has become known as Public Law 280. (P.L.280). See Goldberg, Public Law 280: The Limits Of State Jurisdiction Over Reservation Indians. 22 U.C.L.A. Law Rev. 575 (1975) (hereafter, Goldberg, P.L. 280). It was first enacted in 1953, and amended in 1968, allowing states to assume jurisdiction over

then existing federally recognized tribes and reservations. Historically, when the United States first came into existence there were many Indian tribes outside the land area occupied by the original colonies. It was decided by our founding fathers that, as to those tribes, the Federal Government could best deal with them and protect them. Thus, the Federal Government was given the power over them. Many tribes were resettled to the west in "Indian Country" on reservations. The Government entered treaties with and later enacted laws relating to such tribes. Eight western states, as a condition to admission to the Union, were required to have disclaimers of jurisdiction in their constitutions over the Indian reservations which would be in their territorial boundaries. Under P.L. 280 as first enacted, five (5) of those states were

required to accept jurisdiction. These were known as the mandatory states. Other states, known as optional, were permitted to acquire jurisdiction. But this related to the jurisdiction that the Federal Government, not the state, had over the existing federally recognized tribal reservations. As the Supreme Court noted in Washington v. Confederated Tribes of the Yakima Nation, 99 S. Ct. 740, 755-56 (1979), the history of P.L. 280 reflects congressional concern over law and order problems on (federal) Indian reservations and the financial burdens of *continued* federal jurisdictional responsibility on Indian lands. The Act was intended to facilitate, not impede, the *transfer* of jurisdictional responsibilities to the states. The Act itself, §1321, provides in part:

"The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian Country situated within such state..."(Emphasis applied).

Similar language is used in §1322 (civil jurisdiction).

It is thus clear that if the state exercised jurisdiction prior to 1953 and 1968, the Act would have no application to such state. See Rosebud Sioux Tribe v. State of South Dakota, 900 F.2d 1164, 1167 (1990) (P.L. 280 applies only to states not having jurisdiction). There is nothing in the language or legislative history of P.L. 280 to indicate that it was meant to divest states of pre-existing and otherwise lawfully assumed jurisdiction. Three Affiliated Tribes v. Wold Engineering, 104 S.Ct. 2267, 2275 (1984). (Wold I).

The State of Connecticut has continuously exercised criminal

jurisdiction over the state tribes, including the Mashantucket Tribe, since Colonial times. The lack of federal jurisdiction over the Tribe was noted by President Reagan in his veto message of S. 366 and in §2(f) of S. 1499, the Settlement Act as finally enacted, 25 U.S.C. §1751(f).

In Bryan v. Itasca, supra at 2106-07, the Court stated that the primary concern of Congress in enacting P.L. 280 was with the problem of lawlessness on certain Indian reservations and the absence of adequate tribal institutions for law enforcement. Thus, the provision for *state criminal jurisdiction* over offenses committed by or against Indians on the reservation was the central focus of P.L. 280, citing Goldberg, P.L. 280, supra. In Washington v. Yakima, supra, 99 S.Ct. at 760, the Court noted that Congress passed P.L. 280 "not as a measure to benefit the

States, but to reduce the economic burdens associated with federal jurisdiction on reservations" and "to respond to a perceived hiatus in law enforcement protections available to tribal Indians...," citing Bryan, supra. In Rosebud Sioux, supra at 1170, the Court of Appeals, citing Yakima, listed these two items as major concerns reflected in the passage of P.L. 280.

The case of Three Affiliated Tribes v. Wold Engineering, 106 S.Ct. 2305 (1986) (Wold II) involved a federally recognized tribe. The Court pointed out that: a) P.L. 280 gave federal consent to the *assumption* of state civil and criminal jurisdiction over Indian Country (p. 2307); and b) such *assumption* of jurisdiction was intended to replace the ad hoc regulation of state jurisdiction over Indian Country with general legislation for "all affected

states" (p. 2310), citing Goldberg, P.L. 280. In Three Affiliated Tribes v. Wold (WOLD I), supra, the Court said, at p. 2275:

> "...Pub. L. 280 was intended to facilitate rather than to impede the transfer of jurisdictional authority to the States...Nothing in the language or legislative history of Pub. L. 280 indicates that it was meant to divest states of pre-existing and otherwise lawfully assumed jurisdiction..."

The Court, after emphasizing the word *assumption*, states that "the 1968 amendments did not displace jurisdiction previously assumed under Pub. L. 280, *much less jurisdiction assumed prior to* and apart from Pub. L. 280." (Emphasis applied).

Goldberg, P.L. 280, supra, is recognized as one of the leading treatises on the history, purpose, and effect of P.L. 280 and has often been cited by federal courts. A review of that article discloses many

statements and case citations that clearly state or imply that P.L. 280 was intended by Congress as a *transfer* of criminal jurisdiction from the federal to the state government, i.e., to take the jurisdiction that the federal government then had over federally recognized Indians in Indian Country and transfer all or part of that jurisdiction to the state.

Taking into account the above, i.e., 1) the language of the statute itself that it applies only to states *not having jurisdiction*; 2) the fact that Connecticut had criminal jurisdiction because the Tribe was not federally recognized in 1953 and 1968 when P.L. 280 was enacted; 3) the fact that P.L. 280 does not confer jurisdiction in the federal government, but provides the method of transfer of such then existing federal jurisdiction to the states; and 4) the fact that the condition of state

jurisdiction can be approved by Congress at the time a tribe becomes federally recognized (or thereafter), with or without the consent or agreement of the state and the tribe and absent any special election, it is evident that P.L. 280 does not apply to the Mashantucket Tribe.

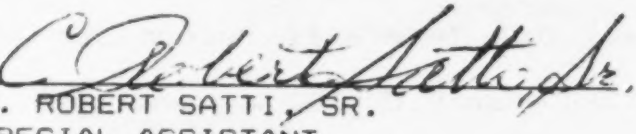
CONCLUSION

For the foregoing reasons, this Court should deny the petition for writ of certiorari.

Respectfully submitted,

RESPONDENT - STATE OF CONNECTICUT

KEVIN T. KANE, STATE'S ATTORNEY

BY 

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